

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8535 of 1991

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH

and

HON'BLE MR.JUSTICE D.A.MEHTA

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

VIKAS PRINTERY

Versus

ASSISTANT COLLECTOR OF INCOME-TAX (INVESTIGATION),

Appearance:

1. Special Civil Application No. 8535 of 1991
MR KH KAJI for Petitioner No. 1
MR MR BHATT for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE M.S.SHAH

and

HON'BLE MR.JUSTICE D.A.MEHTA

Date of decision: 22/06/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.A.MEHTA)

This petition under Article 226 of the
Constitution challenges the notices dated 28.1.1991 (Exh.
"C" Colly.) issued under Section 148 read with Section

147 of the Income-tax Act, 1961 (hereinafter referred to as "the Act") for assessment years 1982-83 to 1986-87 by the Assistant Commissioner of Income-tax (Investigation) Circle 5(1), Ahmedabad, i.e. respondent No.1.

2. The facts, as averred in the petition, are as under :-

The assessment years involved are 1982-83 to 1986-87 and the corresponding accounting years are Samvat years 2037 to 2041. The petitioner purchased certain printing machines valued at Rs.10,43,928/- during Samvat year 2037 and claimed investment allowance at the rate of 25% under Section 32A of the Act. The said investment allowance of Rs.2,60,982/- was carried forward as unabsorbed investment allowance in light of the total income being computed at a loss of Rs.13,870/-.

Similarly, for the previous year, corresponding to assessment year 1983-84, on the printing machinery costing Rs.11,461/-, investment allowance to the tune of Rs.2,865/- was claimed. For assessment year 1984-85, the cost of the new machinery was Rs.4,92,652/- and the investment allowance claimed was Rs.1,23,163/-. For assessment year 1985-86 the claim in relation to unabsorbed investment allowance was Rs.1,23,163/- which was brought forward from the preceding assessment year i.e. assessment year 1984-85. Again for assessment year 1986-87, the petitioner purchased machineries worth Rs.14,59,288/- and claimed investment allowance at Rs.3,64,822/-. It is an admitted position that the business of the petitioner is carrying out printing work on job work basis. The petitioner receives supply of paper, composed scripts and photographic films of the matter to be printed, and such printing work is carried out on printing machines which are rotary off-set machines using consumable stores purchased by the petitioner like printing ink, aluminium graphic plates, rubber blankets, etc.. The income received from the publishers for the job work is admittedly assessed as income from business in the hands of the petitioner. For assessment years 1982-83, 1983-84, 1984-85 and 1985-86 the petitioner has been assessed under Section 143(3) of the Act, while for assessment year 1986-87 the assessment has been framed under Section 143(1) of the Act.

3. Mr KH Kaji, the learned advocate appearing on behalf of the petitioner submitted that out of the five assessment years involved, the reassessment proceedings are barred by limitation for assessment years 1982-83 to 1985-86 as the notices under Section 148 of the Act have

been issued beyond the period of four years from the end of the respective assessment year. In so far as the fifth year is concerned, i.e. assessment year 1986-87, Mr Kaji invited our attention to the assessment order for subsequent assessment year 1987-88 to contend that even for subsequent year on the same set of facts and circumstances the petitioner claimed investment allowance and the same has been granted in the assessment framed under Section 143(3) of the Act. It was submitted that the said assessment has not been reopened or disturbed in any manner. In the circumstances, it was submitted that reopening was bad in law and the petition is required to be allowed.

4. Mr MR Bhatt, the learned senior standing counsel appearing on behalf of the respondents submitted that the petitioner was merely carrying on job work and hence could not be said to have fulfilled the requirements of the provisions of Section 32A of the Act which require that an assessee should be engaged in manufacturing or production of an article as stipulated in Section 32A(2)(iii) of the Act. It was, therefore, urged that the petitioner was merely processing pre-composed printing material and in return the petitioner received labour charges only which did not entitle the petitioner to claim investment allowance under Section 32A of the Act. According to Mr Bhatt, in the circumstances the assessments having been reopened after obtaining approval from the Commissioner of Income-tax, the petitioner did not deserve to be granted any relief at this stage and the Assessing Officer may be permitted to proceed in accordance with law. That the petitioner could have availed of alternative remedy in case of any adverse order.

5. Having heard the parties, it is apparent that Section 32A of the Act requires that an assessee is entitled to investment allowance at the prescribed rate in relation to the machinery or plant acquired during the previous year and which is owned by the assessee and is only used for the purposes of the business carried on by the assessee. It is an admitted position that all the conditions laid down in sub-section (1) of Section 32A of the Act are fulfilled by the petitioner. The provisions of Clause (iii) of sub-section (2) of Section 32A of the Act lay down that an assessee would be entitled to investment allowance on machinery or plant used in any other industrial undertaking for the purposes of business or manufacture or production of any article or thing, not being an article or thing specified in the list in the Eleventh Schedule. It is accepted that the goods

obtained after the printing work carried out by the petitioner did not fall within the prohibited list in the Eleventh Schedule. The short question, therefore, would be whether it would amount to manufacture or production of an article or thing. However, for the reasons that follow hereinafter, we do not propose to enter into the larger controversy.

6. It is an admitted position that for assessment years 1982-83 to 1985-86, the notices under Section 148 of the Act dated 28.1.1991 have been issued beyond the period of four years and hence, unless and until the revenue is in a position to show that there has been escapement of any income due to failure or omission on the part of the assessee to disclose truly and fully all material facts for the purposes of his assessment, reopening cannot be resorted to. In the present case, as the facts on record show, there is no failure or omission on the part of the petitioner either to make a return as required or any failure or omission in relation to any material fact necessary for the purposes of assessment as required under the proviso to Section 147 of the Act. Therefore, the revenue having failed to discharge the onus under the proviso to Section 147 of the Act, no case is made out for assessment years 1982-83 to 1985-86 being disturbed and the notices for the said four assessment years are quashed. It is held that the reassessment proceedings are bad in law.

7. In so far as assessment year 1986-87 is concerned, though the same is within the period of four years from the end of the relevant assessment year, it is apparent that even for the said year not only there is no omission or failure on the part of the assessee, but there is no material with the Assessing Officer to come to the conclusion that any income has escaped assessment. The position in law is well settled that reopening of an assessment is not permissible on a change of opinion. In fact, for the immediately succeeding assessment year, namely assessment year 1987-88, on the same set of facts and circumstances, in the assessment framed under Section 143(3) of the Act the petitioner has been granted deduction of investment allowance. The said assessment has not been disturbed in any manner as stated at the Bar. Thus, for this year it is nothing else but change of opinion. In the circumstances, it is not possible to hold that the reopening for assessment year 1986-87 is justified in any manner. The notice under Section 148 of the Act for assessment year 1986-87 is also, therefore, quashed and the proposed reassessment for the said assessment year is held to be bad in law.

8. In the result, the petition is allowed and the notices, all dated 28.1.1991, under Section 148 of the Act for each of the assessment years i.e. 1982-83 to 1986-87 are hereby quashed and set aside and the respondents are restrained from proceeding further in pursuance of the said notices.

Rule made absolute. There shall be no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/-